

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF TEXAS (HOUSTON)

IN RE: . Case No. 23-34815
GALLERIA 2425 OWNER, LLC, . Chapter 11
Debtor. . 515 Rusk Street
Houston, Texas 77002
Thursday, December 5, 2024
8:59 a.m.

TRANSCRIPT OF HEARING ON EMERGENCY MOTIONS
BEFORE THE HONORABLE JEFFREY P. NORMAN
UNITED STATES BANKRUPTCY COURT JUDGE

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1 (Proceedings commence at 8:59 a.m.)

2 THE COURT: All right. Good morning. It's 9 a.m.,
3 and we're on the record for Thursday, December the 5th, 2024.
4 There's only one matter set at 9 a.m., and that is
5 Galleria 2425 Owner, LLC. Appearances, please.

6 MR. TROOP: Good morning, Your Honor. Andrew Troop
7 with Pillsbury Winthrop Shaw Pittman on behalf of National Bank
8 of Kuwait for itself and the assignee. I'm here with Charles
9 Robbins -- Charles Robbins, Charles Conrad; Charles Robbins was
10 my first partner -- Charles Conrad, and on the line also is our
11 partner, Patrick Fitzmaurice.

12 THE COURT: Thank you. Other appearances?

13 Mr. Cecere, you are apparently muted.

14 MR. CECERE: Good morning, Your Honor. This is
15 Carl Cecere appearing for Jetall Companies and 2425 WL in this
16 case. I have also got Mark Snow on the phone, I believe, but
17 he is not able to get the link to work for him.

18 THE COURT: All right. Thank you.

19 MR. SHANNON: Good morning, Your Honor. This is
20 R.J. Shannon on behalf of Christopher Murray, trustee of the
21 liquidating trust. We aren't a party to the actual motions
22 that are proceeding, but just here for the hearing and to
23 observe and to answer any questions the Court may have of us.

24 THE COURT: All right. Thank you. All right. I
25 reviewed the docket this morning, and I'm assuming the parties



1 are aware that there was a suggestion of bankruptcy filed by
2 Jetall.

3 MR. TROOP: Yes, Your Honor.

4 THE COURT: I reviewed the petition in the docket.
5 It's a little bit strange in that it looks like Jetall actually
6 filed an involuntary against itself, at least as you read the
7 docket, but there is a petitioning creditor in the schedules.
8 I looked, there does appear to be a legitimate company called
9 The Petitioning Creditor. So I'll turn to the parties as to
10 what they want to see happen today, and I'll start with
11 Mr. Troop.

12 MR. TROOP: Thank you, Your Honor. Your Honor,
13 we're here on two motions today, right? The first is -- there
14 are two motions. I'm actually going to take them out of
15 order --

16 THE COURT: Okay.

17 MR. TROOP: -- given I think we're going to talk
18 about Jetall more. The first motion is with respect to 2425 WL
19 and compelling it to release its lien against the property.
20 There is no bankruptcy filed by or against 2425 WL. There is
21 no relief sought against Jetall in the emergency motion filed
22 against 2425 WL.

23 And in the response that was filed, identified as a
24 combined response by Jetall and 2425 WL, there is not a single
25 statement in opposition to the relief requested against



1 2425 WL. And in fact, there can't be, Your Honor. There can't
2 be. You entered an order free and clear. We could require
3 people to release liens. If they didn't, we had the right to
4 come back to you.

5 When we were here -- well, not physically here in
6 this courtroom, but before you about ten year -- ten days ago,
7 we made the point that the past is prologue, and the past is
8 prologue. We made a demand for the delivery of the release.
9 We heard nothing. We heard that, well, if we withdraw the
10 motion, they might deliver -- they'd deliver a release, but
11 they didn't. And there's just absolutely no reason to delay
12 cleaning up that part of the title pursuant to your free and
13 clear order.

14 And so on that, Your Honor, I would ask that you
15 grant the motion, and I'll cede the podium.

16 THE COURT: Mr. Cecere?

17 MR. CECERE: Your Honor, we disagree with the other
18 side, the movants, that they were requested by the movants with
19 regard to 2425 WL does not implicate Jetall, and I'm going to
20 share my screen. This is their proposed order, 839-1,
21 Paragraph 6.

22 THE COURT: If you're sharing your screen, I'm not
23 seeing it.

24 MR. CECERE: Okay. It's coming now. Okay. So I'm
25 sharing my screen, Paragraph 6. They are not only requesting



1 that title agents and title insurance underwriting is given an
2 order saying that the lien is invalid and that the people
3 responsible for recording these instruments are going to put
4 something in the title record requiring that it be recorded
5 that this lien was invalid, they are also including in
6 Paragraph 6, a I think wildly overbroad and improper injunction
7 that would prohibit 2425 WL and any affiliate entity, including
8 without limitation Jetall Companies, Inc. -- that is the debtor
9 in bankruptcy -- and other affiliated entities from doing
10 anything and for being either enjoined and barred in bringing
11 any action in any court challenging titles to property. That
12 clearly violates the stay to impose that kind of relief.

13 As we mentioned in our response, this was filed
14 from a combined response to both motions. That would also
15 impact the state of the Texas relief bankruptcy because all of
16 the affiliated entities are alleged to be (indiscernible)
17 those. We think the automatic stay therefore applies to all of
18 them. And we also think that those parties aren't before the
19 Court. There is no basis to order that now those parties be
20 enjoined from challenging titles in completely separate
21 proceedings when there's no other -- when only 2425 WL is
22 before the Court.

23 There's also been another development that I think
24 is important, and I don't quite know why Counsel isn't
25 mentioning it, and that is the disqualification of Pillsbury



1 Winthrop to bring any actions against any of these entities.
2 There was an order disqualifying Pillsbury specifically
3 intervening in the forceful injury detainer action. We talked
4 about this in our last hearing. That is -- that was -- it's
5 our Exhibit 847-4. I'm going to share that one as well.

6 Now, this order doesn't just apply to actions
7 against Jetall. It applies to any action against -- it applies
8 to Pillsbury Winthrop and disqualifies them from anything on
9 related issues that may appear in adversarial proceedings, and
10 the order specifically finds related issues to include matters
11 involving the property. So we think anything related to the
12 property (indiscernible) in this case is also within the scope
13 of the disqualification order.

14 Now, late last -- late yesterday we learned that
15 the movant had received an order that purported to remove the
16 disqualification of Pillsbury, and I'm going to turn to --

17 MR. TROOP: Objection, Your Honor. Relevance.
18 There's no motion before you to disqualify, number one. Number
19 two, there is an order of the JP Court which is on its docket
20 and easily reviewable by you which amends this order to state
21 specifically no disqualification of Pillsbury.

22 If anyone has a complaint about that, let them go
23 back to the JP Court. This is not the issue that we had here,
24 which was the implication in terms of appearing before you, and
25 again trying to be prudent, this is -- there's just no basis



1 for this, Your Honor, and I don't think we should spend any
2 time on it.

3 THE COURT: Mr. Cecere, I'm going to sustain the
4 objection as to relevance. And as I said at a prior hearing,
5 that if you want to disqualify any lawyer in front of me, you
6 need to file such a motion in front of me. I could really --
7 and I say this with all due respect, understanding that when I
8 say that, I really probably don't mean it, I'm not really
9 concerned with what the JP Court has done. I take anything
10 they do with a grain of salt. With all due respect to their
11 jurisdiction and what they can and cannot do, they are, you
12 know, an inferior court as far as I'm concerned. So I'll
13 sustain that objection.

14 All right. Go ahead.

15 MR. CECERE: Your Honor, with that in mind, we feel
16 it's necessary to move to disqualify Pillsbury because they
17 are -- they were the co-counsel and they may have received
18 something (indiscernible).

19 THE COURT: And if you would like to do that, I
20 would like you to file a written motion. I'm not going to
21 entertain an oral motion for disqualification. It's too late
22 at this point in time, and it's without notice specifically.
23 And I believe that there's been a district court judge who's
24 already said that you can't simply raise it at a hearing,
25 because it's too late, and that happened on an appeal in 2425.



1 So move on to something else because that's not
2 making any traction.

3 MR. CECERE: Okay. Thank you, Your Honor. We --
4 with regard to the relief requested in the order, we did not
5 want to sign a voluntary lien release, at least without getting
6 some kind of assurance from the Court, from the other side,
7 that there would be no further consequences.

8 We didn't want to release the lien because
9 obviously we have several appeals dealing with 2425 WL's
10 asserted liens, and we were worried that voluntarily
11 relinquishing any interest in those liens would cause problems
12 for those, and they might say that we lacked standing or that
13 we lacked the decisionable interest in the lien after releasing
14 them. They're making exactly those kinds of objections in the
15 appeals that are ongoing right now, so we didn't feel it was
16 prudent without some assurance from them that we would
17 voluntarily do those liens.

18 Now, with regard -- we don't oppose the idea of
19 them getting -- obtaining some sort of order, some form of
20 order by which they direct the title record keepers to
21 disregard a lien. The liens has been invalidated. They were
22 invalidated in the plan. They were invalidated by this Court's
23 specific order invalidating them separately, and the sale order
24 gives the Court the power and the parties the right to request
25 that the records be changed.



1 What we object to in this case, however, again, and
2 I'm just going to bring you back to it, is Paragraph 6, which
3 is much too broad and invalid in this case, we think, because
4 not only does it deal with parties well beyond 2425 WL, when
5 you're only dealing with 2425 WL's lien in this case, it also
6 permanently enjoins them from ever bringing any action to
7 challenge title of a property, when we know from the eviction
8 action that we are challenging title of property. We assert
9 that we still have a valid lease, and we think that is an
10 entirely valid contention and it has nothing to do with whether
11 or not this lien gets released.

12 Our lease is completely separate from that lien.
13 That's a completely different interest, so we don't think that
14 one should flow from the other or that we should be prohibited
15 from doing any kind of action in this other case because of the
16 release of lien in this case.

17 We think they're entitled to clear the property,
18 although we don't think there's any particular emergency that
19 requires us to do it right now. But what we object to is the
20 idea that there be an injunction included in this order that
21 (indiscernible) directed to the title record keepers that
22 permanently enjoins us from ever challenging title in any
23 proceedings regarding any entity related to Mr. Choudhri.

24 We also will point out that that would also run
25 into problems with the automatic stay in the Texas



1 (indiscernible) case, because there's been allegations of alter
2 ego. And as we outlined in detail in our response, an
3 allegation of alter ego subjects the alter ego to the automatic
4 stay in bankruptcy if one if the alter egos is a bankrupt party
5 because that -- the allegation of alter ego means that someone
6 is alleging that the property of one company is the property of
7 the other, that they're one and the same. And that means the
8 alter ego is holding property of the estate and is subject to
9 the stay under (a)(3) (indiscernible).

10 So for all those reasons, we think that Paragraph 6
11 should be stricken from the order, if the Court is inclined to
12 grant this motion.

13 THE COURT: Mr. Troop?

14 MR. TROOP: If I may, Your Honor. Andrew Troop for
15 NBK.

16 Your Honor, these parties are already enjoined in
17 an order from challenging title to the property. That's what
18 your sale order says. The -- in addition, not one of these
19 parties, not one of these parties objected to the entry of the
20 sale order. Not one of these parties appealed the entry of the
21 sale order.

22 With respect to whether this is a violation of the
23 automatic stay, it is not a violation of the automatic stay for
24 you to say that your order conveyed the property free and clear
25 of someone -- of anyone's claim or interest in it. That



1 predates the filing of the Jetall involuntary petition, and it
2 is an argument in connection with the alter ego lawsuit that
3 has been around for a long time and never raised.

4 Finally, Your Honor, I note that, with all due
5 respect to Judge Isgur, I actually think Judge Isgur's analysis
6 in the transcript that was attached, which I -- I'm sure you
7 read, has it backwards because what he says is that without any
8 affirmative relief being granted by the Bankruptcy Court in the
9 Western District of Texas extending the automatic stay, it
10 is -- it might be automatically extended to an alter ego
11 because the claims are that the creditors of the alter ego are
12 also creditors of the debtor, right? That's what the claim is.

13 So what Judge Isgur said was, well, that means
14 there could be a diminution in the value of the estate,
15 presumably the Texas REIT estate, because creditors of these
16 non-debtor entities have claims against the creditors of the
17 non-debtor entities. And, Your Honor, that's true against a
18 guarantor. That's true against someone who's jointly and
19 severally liable. That's true in a whole host of ways.

20 There's no automatic extension of the automatic
21 stay to a far-flung group of, we'll admit for argument
22 purposes, related entities. And I think that Judge Isgur was
23 being very deferential to Judge Robinson, right, in Austin.
24 But with all due respect, and he's really often right, on this
25 one, I think he's got it wrong.



1 There is no implication from the Texas REIT
2 bankruptcy, and if the Texas REIT debtor, during the course of
3 its entire proceeding had thought that was true, would it not
4 have filed a motion to extend the automatic stay or for some
5 affirmative injunctive relief under Section 105? There's just
6 no reason to give credence to that argument.

7 And secondly, Your Honor, telling someone that they
8 can't violate your existing order is not a violation of the
9 automatic stay, because what it's saying here is you can't
10 challenge my order which established title. In fact, if they
11 want to do that, they should have come back to you. Not a
12 collateral attack. And they are not doing that.

13 Secondly, Your Honor, a claim is -- in this
14 context, right, is a claim that is either a right to money
15 damages or a right to equitable performance that gives rise to
16 money damages. This doesn't ask for that. This doesn't ask
17 for the establishment of a claim or a right to payment. The
18 automatic stay doesn't apply to that.

19 And it's also not an argument that again, and I'm
20 repeating myself here, that they assert an interest in property
21 because what they assert is that your order didn't do what it
22 said, and they've waived that, period.

23 So I don't think there's any reason not to enter
24 Paragraph 6, but if that's what's preventing you from entering
25 this order, Mr. Conrad and I will talk about perhaps how we



1 could pare it back. But it would be without prejudice to the
2 arguments that I just made.

3 THE COURT: All right. Mr. Cecere, I'll let you
4 respond one more time to the arguments of Mr. Troop, and then
5 we can go from there.

6 MR. CECERE: Thank you, Your Honor. What I heard
7 from Mr. Troop kind of confused two different stay issues.

8 As we mentioned, now that Texas -- now that Jetall
9 is in bankruptcy, no release can be entered against it. And
10 the idea that this is no -- there's no harm, no foul, you know,
11 here because this is already -- they're already prohibited from
12 bringing lawsuits, that's not true at all. We are entitled to
13 bring lawsuits on behalf Jetall. I'm not saying there will be
14 (indiscernible).

15 THE COURT: Whoa, whoa, whoa, whoa, whoa, whoa,
16 whoa, whoa. Hold on for one second. So you think that my
17 prior order doesn't prohibit Jetall from suing relative to
18 title to this property? Because I think it does.

19 MR. CECERE: Well, I mean, I think we have to -- I
20 think we have to (indiscernible) order.

21 THE COURT: You have to comply with my prior orders
22 irrespective of the bankruptcy proceeding.

23 MR. CECERE: Well, I mean, I think that your prior
24 orders speak for themselves in that regard, but I don't think
25 that they're blanket prohibitions on any kind of suit, and I



1 don't think they prohibit Jetall from suing (indiscernible).

2 THE COURT: Okay. So let me be clear, Mr. Cecere,
3 so that you're aware of where I stand, because I think I've
4 already said in one of my orders, I think that where we are now
5 is to a point of basically vexatious litigation. And I've
6 warned in my prior order that if it continues, I will sanction.
7 I'll come down hard on the parties, and that includes you,
8 okay, just so you're aware of that.

9 So my orders say what they say. It's a sale free
10 and clear of liens. I don't think you can challenge title at
11 this point in time. I'm worried about stepping on the
12 automatic stay, and I'll take those concerns into consideration
13 when I draft an order. But I think your arguments that you
14 somehow have a right to challenge, in Jetall's case, I don't
15 think it exists, okay? And I'll rule on that till the cows
16 come home, okay? Just so you're aware. All right?

17 MR. CECERE: Okay. And I certainly respect your
18 order. I would just suggest as sensitivity (indiscernible) to
19 automatic stay and to not adjudicate any kind of claim that
20 that Paragraph 6 be stricken.

21 MR. TROOP: Well, I think -- I think here's the
22 problem. I think that this is the argument that's being made.
23 I've already -- I've already, in effect, ruled on the claim,
24 and all this is doing is confirming that. But again, I am --
25 I'm a bankruptcy judge. I don't want to step on the automatic



1 stay. And I do understand that argument, all right?

2 MR. CECERE: Well, I -- and I -- and just one final
3 point, if I might, Your Honor. The fact that -- the fact that
4 you might have reason to invalidate the lien of one party in
5 this order doesn't really give any reason to, you know, even
6 get -- wade into the thicket of the automatic stay. All of
7 those other entities are subject to their own orders that
8 you've already entered. There's just absolutely no grounds to
9 put anything in this order that pertains to them.

10 And if the Court is concerned about the
11 vexatiousness, the alleged vexatiousness of these parties,
12 there are sanctions that can be imposed, and we want to steer
13 well clear of that, to be very clear. But like -- but in
14 imposing this kind of injunction without notice to these
15 parties, without them being able to appear before the Court, we
16 think would be inappropriate.

17 And again we also think there's no emergency that
18 requires this. You know, there's no -- there's been no
19 (indiscernible) of title by all of these associated entities in
20 Paragraph 6. So I think that, given the sensitivity regarding
21 the stay, both in the Texas REIT case and in the Jetall
22 Companies' case, we would suggest that Paragraph 6 be -- 6 be
23 stricken. And again, we understand where you are on that.

24 THE COURT: All right. Mr. Troop, I'll let you
25 close.



1 MR. TROOP: Thank you, Your Honor. Thank you very
2 much. Your Honor, I think that the Western District of Texas
3 Bankruptcy Court does not have exclusive jurisdiction in
4 determining whether the automatic stay applies. You have the
5 ability to decide that the automatic stay does not apply in
6 this case, whether it's the Texas REIT bankruptcy or the Jetall
7 bankruptcy. That is not a provision of the Bankruptcy Code
8 that is -- that rests in the exclusive jurisdiction of the
9 Court in which it was filed.

10 We see state courts all over the country ruling,
11 and ruling and being sustained in ruling about the application
12 of the automatic stay in the matter before them. So I would
13 just ask that you consider that as well on -- as you think
14 about this. And of course, as I said, Your Honor, if there is
15 a particular issue you would like us to address here or think
16 about, we're happy to do that as well.

17 THE COURT: All right. Thank you. So here's what
18 I'm going to do. As it relates to ECF Number 239, I'm going to
19 grant that motion. However, I may modify the proposed form of
20 order.

21 I make a finding on the record that the automatic
22 stay in the Texas REIT case doesn't apply to the current case.
23 I've always been of the belief that if a debtor wants to extend
24 the automatic stay to a related entity, it requires a motion
25 and an order. It doesn't just happen automatically.



1 So any sort of claims that there's an automatic
2 stay in the Texas REIT case I think are remote, not well-
3 founded, and I'll deny any sort of relief related to that.

4 As it relates to Jetall, I do have some concerns.
5 I'm going to review the code. I'm going to review my prior
6 orders. There may be some modification of the order that is
7 proposed by the movant relative to Jetall. If I believe that
8 order basically steps on the rights of the Western District and
9 the automatic stay, I will alleviate those without prejudice to
10 coming back.

11 I also intend, just so the parties are aware, I
12 don't think a judge has been assigned to the Jetall involuntary
13 case yet. It's probably going to be Judge Bradley or Judge
14 Robinson. I'm -- I mean, I know them personally. So when a
15 judge gets assigned, I will reach out to them and make sure
16 that, as a practical matter, they don't have concerns about me
17 perhaps signing this order, which may delay the order by a day
18 or two. But if they have no concerns once they see the order
19 and we have some discussions, then perhaps the automatic stay
20 isn't even an issue at all. All right?

21 MR. TROOP: Thank you.

22 THE COURT: Thank you. All right, Mr. Troop, you
23 want to address --

24 MR. CECERE: With respect, Your Honor --

25 THE COURT: -- the next motion?



1 MR. CECERE: -- can I -- can I say one more thing,
2 Your Honor? We do object to you reaching out and discussing
3 the case with the other judges, but with that said
4 (indiscernible).

5 THE COURT: Well, you can object all you want. I'm
6 going to do it anyway.

7 MR. TROOP: Okay.

8 THE COURT: Okay. Thank you.

9 MR. CECERE: Okay.

10 MR. TROOP: I --

11 THE COURT: I think it's within my discretion.

12 MR. TROOP: Your Honor, I agree. But if you'd
13 like, I will file a motion for a joint sitting.

14 THE COURT: Okay. I don't think it's necessary.
15 Thank you.

16 All right. So let's talk about the next motion.

17 MR. TROOP: I will, but just before we do, I think,
18 on the record, you said you were going to do an order with
19 respect to 289?

20 THE COURT: No, 239, isn't it?

21 MR. TROOP: I think it's 839

22 THE COURT: Oh, excuse me. It is 839. I'm looking
23 at -- I just for some reason said 239, but it's 839. I
24 apologize.

25 MR. TROOP: Thank you, Your Honor. With regard to



1 the motion as it relates to Jetall, Your Honor, again, I don't
2 think the automatic stay applies. This is an order confirming
3 your existing order for them to vacate the property.

4 And, Your Honor, I don't think that they can argue
5 that there is an interest in the property. This property was
6 sold free and clear of all liens, claims, encumbrances, and any
7 other interest. The lease was neither assumed nor assigned to
8 the buyer. The buyer took the property free of the lease.
9 There is no leasehold relationship between a buyer and Jetall.

10 Jetall is at best, at best a tenant at sufferance,
11 which gives it no -- real no -- really no continuing interest.
12 And therefore, Your Honor, this is analogous to 362(b), I think
13 it's (5), which says specifically that the automatic stay does
14 not apply to a lease that's been terminated prior to the filing
15 of the bankruptcy, right? It doesn't apply.

16 Here there was no lease, as I said, between the
17 assignee and Jetall. So there's no prohibition in entering an
18 order, and you can decide that the automatic stay, if it might
19 otherwise apply to this case, as it was, and I'll come back to
20 that, but it doesn't apply here because of the exception. It
21 doesn't apply here because of the exception.

22 Secondly, Your Honor, I have to say that it is
23 curious that an involuntary petition was filed at nine o'clock
24 last night by a single petitioning creditor. And as I think I
25 saw the same thing you did, Mr. Cecere has already filed it.



1 Your Honor, that smacks of bad faith. And whether you decide
2 that or the judge in the Western District of Texas will decide
3 that, I do think that's a significant issue here, a significant
4 issue here. There may be other issues in connection with the
5 filing, but it's that as well.

6 Finally, Your Honor, it seems to me that this
7 Chapter 11 case, and the specific reason that it was filed, and
8 the specific fact that, until last night, Jetall's headquarters
9 and location was in Houston. Its largest -- the petitioning
10 creditor is in Houston, the building is in Houston, the buyer
11 is in Houston, that this is really the first filed case. And I
12 think you could, if you wanted, enter an order today
13 transferring that case here.

14 That would eliminate any need to coordinate with
15 Judge Bradley or Judge Robinson. It would give you the ability
16 to say, without hesitation, I find the automatic stay doesn't
17 apply. And if we have to file -- if we have to pay our filing
18 fee to do that for that, I will do that immediately. And you
19 are able, as frankly, Your Honor, you should, even here,
20 enforce your order, your existing sale order.

21 This is not a case where there is a lease. This
22 is -- this is not preserving an asset of the estate, of an
23 estate, an estate. This is interposed to continue a pattern.
24 I would also say vexatious litigation, but at the very least
25 delay, at the very least delay.



1 At an earlier hearing, Your Honor, I think, in
2 connection with the confirmation and plan of reorganization, I
3 looked at you and I said, enough is enough, it's time to move
4 forward. That's what this is, enough is enough. There's no
5 reason not to enter this order, there's no reason not to
6 require Jetall to take its furniture. Maybe it has an interest
7 in the furniture, to take its furniture out, but it preserves
8 the value of its estate if it does that. But it has no
9 interest. The property has been sold free and clear of that
10 interest.

11 And, Your Honor, there is a -- an argument made in
12 the reply that somehow we've already given Jetall until
13 December 18th to get out. Mr. Cecere was very clear when he
14 said, well, we'll give a release on the other part if we
15 don't -- if we know we're not going to get sued, but I'm not
16 waiving that right.

17 And here there's not a statement that says, oh, and
18 we'll get out by December 18th, we'll comply. Not that that
19 would be acceptable under the circumstances, but it's not even
20 offered. And instead, Your Honor, you can see the letter,
21 which both he and we attached as exhibits and filed as
22 exhibits. I apologize, I don't remember the exhibit number off
23 the top of my head.

24 Can you -- the letter that we sent, we'll put that
25 in the record in just a minute.



1 But our reservation of rights, with respect to
2 coming here for relief for any purpose unrelated to, in
3 addition to, on a different time schedule than what was
4 filed -- what was sent as purely, purely a precautionary
5 measure, as it says in its -- in -- on its face.

6 Which, Your Honor, it's 14, Your Honor, I think
7 Exhibit 14. And, Your Honor, when you put all that together,
8 there's simply no reason not to enter an order compelling
9 Jetall to vacate the property at 2425 West Loop South at this
10 time. Thank you, Your Honor.

11 THE COURT: All right.

12 Mr. Cecere?

13 MR. CECERE: Your Honor, several responses, but I
14 would like to start with the contention that there's a
15 provision in the code that (indiscernible) evictions
16 (indiscernible) code that Mr. Troop claims doesn't exist, so I
17 don't quite know what he's talking about. There are provisions
18 in the code that relate -- that have exceptions to the
19 automatic stay for residential reasons. I can provide those to
20 you later on.

21 I don't want to exhaust (indiscernible), but
22 there's nothing that says anything about commercial property in
23 providing exemptions -- exceptions to the automatic stay,
24 allowing evictions just because it's a commercial property.
25 And I don't think that that -- I -- so I think that the



1 automatic stay is a dead letter for any argument about evicting
2 Jetall.

3 Now, I will reiterate the points that we made in
4 our motion, in our response. There's no personal jurisdiction
5 here. Jetall has never appeared in this proceeding. It has
6 never been provided with service of process. And all we did is
7 submit a claim, and submitting of the claim under
8 Granfinanciera, allowing the Court to be exercise
9 (indiscernible) authority with regard to adjudicating a claim,
10 but it doesn't allow it to be a roving commission, doing
11 whatever it wants to a creditor simply because that creditor
12 has to come to court.

13 So we object on that basis. We've heard no
14 response on personal jurisdiction from Mr. Troop or the movants
15 in this case. There's no subject matter jurisdiction to do the
16 eviction, especially under these circumstances, because there's
17 got to be some connection to the estate in order for
18 jurisdiction to attach.

19 And when this property was sold, the connection
20 between the debtor and the property and the estate and the
21 property was severed. Now it's in the hands of a party that
22 has nothing to do with this bankruptcy, that didn't even exist
23 when the bankruptcy was filed, and it's an assignee of -- and
24 its only relationship to this case is that it's an assignee of
25 an interest of a plan proponent and creditor (indiscernible).



1 That is not enough to bring this case before the Court. Now,
2 the movant has suggested that the fact that this involves your
3 sale order somehow makes this a core proceeding, but the
4 Court's authority to interpret its order and enforce its order
5 doesn't allow it to expand its orders in the areas where it
6 doesn't have jurisdiction.

7 And in this case, I disagree entirely with
8 Mr. Troop, and I haven't heard any real argument to the
9 contrary, the sale order does not -- does not order a change of
10 possession from Jetall to anyone else. It does not -- it does
11 not effectuate anything at all in that regard. It transfers
12 the property subject to any interest that may be attached, and
13 any wrinkle that may exist, to a new buyer.

14 And there is a provision that says it comes free
15 and clear of liens. It's not even clear, and Mr. Troop hasn't
16 established that liens or encumbrances incorporate leases,
17 leasehold interest, which (indiscernible) under the property as
18 a whole, but just are interests that are also subject to the --
19 to the overall ownership of the property. And in a commercial
20 property, you want to have tenants. That's the idea of these
21 sorts of properties.

22 And so -- and we also respectfully disagree that we
23 don't have any kind of interest in the property as with regard
24 to our lease. That really just flouts a number of code
25 provisions, in addition to the (indiscernible) under



1 Section 363, and that (b) and (f), "A sale free and clear
2 cannot destroy rights in a leasehold without adequate
3 protection," which the plan does not provide to Jetall.

4 And even if the debtor rejects the lease outright,
5 the lessee has the right to remain on the property through its
6 term under Section 365(h)(1)(A)(ii), "To the extent such rights
7 are enforceable under applicable non-bankruptcy law."

8 And under 103 (indiscernible) this is one of
9 (indiscernible) own cases. And that cites, it interprets all
10 the authorities I've just mentioned, the Court, the Fifth
11 Circuit, held that the requirements of -- that if a tenant
12 (indiscernible) is current on its lease obligations -- and
13 there's been an allegation in this proceeding that Jetall was
14 not -- that the tenant can stay even after the sale is free and
15 clear.

16 That's what we show, and they have not
17 distinguished it. They distinguished it on the fact -- by the
18 fact that the tenant in that case was evicted, but the tenant
19 in that case was behind on its rent. So under non-bankruptcy
20 law, it could have been evicted. But they have provided no
21 reason other than the existence of this bankruptcy and supposed
22 termination of our leasehold interest to suggest that they --
23 that we can be evicted in this case, and that termination of
24 our legal interest just simply didn't happen. It didn't happen
25 (indiscernible) because there was a sale free and clear



1 (indiscernible) and also it didn't happen because our lease was
2 being rejected under the plan, because that really put the
3 debtor in breach.

4 And that's 11 U.S.C. 365(b)(4), and I'm also
5 citing -- these are cases cited in our response.

6 (Indiscernible) Continental Airlines in saying that the -- a
7 (indiscernible) rejection does not terminate the lease. It
8 just puts the debtor in violation of the lease. So we think we
9 have a legal interest. We do -- we have a valid lease. We
10 have a right to be on the property, and that's one of the
11 reasons that, you know, living under the JP Court, they lost.
12 And they can try again if they want to prove otherwise, but
13 they can't -- they cannot come here and convert this Court into
14 a glorified justice of the peace.

15 The exclusive jurisdiction of the eviction
16 (indiscernible) with the justice of the peace. That's defined
17 under the Texas law that they admit (indiscernible) provides
18 the only authority for them to (indiscernible) find any
19 (indiscernible) in any statute anywhere that would allow them
20 to evict us. And they find no (indiscernible) in the code that
21 would allow them to anything of the kind.

22 And I would address some other points that they
23 made as well, in addition to the fact it was kind of a
24 (indiscernible) objections we've already made that
25 (indiscernible) will violate the automatic stay in both Texas



1 REIT and in the Western District of Texas.

2 The suggestion that this is in bad faith from two
3 lines on a bankruptcy filing seems to me extraordinary
4 (indiscernible) and I think frankly ridiculous. They had no
5 idea who (indiscernible) relationship to the -- to the debtor,
6 and they -- and they also have no basis to conclude, based on
7 two lines in a bankruptcy filing, that this was fictitious or
8 that there's no office in Austin by which we can do this.

9 If they want to make those allegations, they're
10 free to do so. They -- I would respectfully suggest that they
11 come forward with actual proof. But based on what they're
12 suggesting now, I think it's ridiculous of them to suggest that
13 this is bad faith or that there (indiscernible) here.

14 And now, what I find most extraordinary about
15 Mr. Troop's argument here is he says that we are trying to
16 delay things with this. Now, that -- in that -- and that we
17 had promised that we would be gone by December the 18th. I
18 don't see we ever made any type of promise that we would be out
19 of this office by December the 18th. To be perfectly frank,
20 given the nature of the -- of our office space, we're not going
21 to be able to get out that fast under any circumstances.

22 What we're saying is we had a lease (indiscernible)
23 to do something. That was the bare minimum, and that was the
24 bare minimum in the promise that they made to us. They gave us
25 30 days to vacate. They gave it to us four different times,



1 and on (indiscernible) to evict. And that is, by the way, in
2 846-22 of their exhibits and 847-3 of ours. Four different
3 times they say Jetall shall vacate the property by December the
4 18th, 30 days from the date of this notice.

5 Now, they just don't want to comply with their own
6 vacate notice. They just don't want to comply with the promise
7 that they made that we would have 30 days at least to get out
8 of the property. They just wanted (indiscernible) go faster.
9 That is not an emergency that justifies any kind of
10 extraordinary (indiscernible). It certainly doesn't justify
11 having this Court step into the shoes of the justice of the
12 peace. It definitely doesn't allow the Court to enter an order
13 that contradicts the terms of the -- of the justice of the
14 peace order, which said that we would get -- said we had to get
15 valid notice in the right to vacate, and (indiscernible)
16 satisfying the requirements that they have bound themselves to
17 under the Texas (indiscernible) to evict Jetall.

18 And I'll say one final thing. The idea that they
19 can use the justice of the peace court for the purchase of the
20 property, can use the justice of the peace court and then come
21 to this court, violate (indiscernible) doctrine, but also
22 (indiscernible) and I heard no discussion about how they can
23 square the contention that as state court losers they can now
24 collaterally attack the justice of the peace's holding, do the
25 exact (indiscernible) form of relief that they sought from the



1 justice of the peace and the justice of the peace denied, and
2 we think that that is not going to fly, Your Honor.

3 THE COURT: All right. Thank you.

4 Mr. Troop, I'll let you close, and then I'll tell
5 you what I'm going to do. Go ahead.

6 MR. TROOP: Thank you, Your Honor. In -- I think
7 the order that the arguments were made, the argument with
8 regard to personal jurisdiction.

9 Well, first I need to correct something. I said
10 Mr. Cecere filed the (indiscernible). We confirmed he didn't,
11 and I'll always stand up and tell you when I've made a mistake.
12 That doesn't, however, change my conclusion that there is
13 something that's (indiscernible) about this.

14 Secondly, Your Honor, the issue with regard to
15 personal jurisdiction over Jetall. Jetall, by its own
16 admission, resides here in Texas. You have personal
17 jurisdiction nationwide, in fact, over parties, creditors,
18 counterparties to executory releases. And there is no
19 requirement that in obtaining a sale (indiscernible) a summons
20 or a complaint needs to be filed.

21 What has to happen is that notice has to be given,
22 and Jetall, as I recall, had a lawyer who appeared for it in
23 this case (indiscernible).

24 MR. SHANNON: Mr. Burkes.

25 MR. TROOP: What?



1 MR. SHANNON: Mr. Burkes.

2 MR. TROOP: Mr. Burkes appeared for it in this
3 case. Others I think appeared for it in this case. And they
4 had notice. We gave notice to Jetall, as I recall. We can
5 check the certificate of service, but we're pretty good about
6 stuff like that, as is Mr. Shannon. The -- but regardless,
7 personal jurisdiction isn't the question and a summons and
8 complaint is not (indiscernible).

9 Next, Mr. Cecere selectively refers you to your
10 sale order. Whenever he talks about the sale free and clear,
11 he omits "and other interests." What are other interests?
12 They have to be leases, easements, anything else that might
13 exist with regard to the property, which we had a right to take
14 (indiscernible).

15 And he also selectively forgets about the
16 provisions of the order that say no one -- that people will
17 surrender their property, if they're in possession of it, and
18 he admitted that Jetall is in possession of a piece of
19 property, and they have not surrendered it. And there's
20 another provision in the order which says they won't interfere
21 with the enjoyment and use of the property, which they are
22 clearly doing.

23 With regard to in Royal Street Bistro, Your Honor,
24 as we identify in our papers, what that case says is don't
25 blindly file -- follow the Seventh Circuit's decision. It



1 makes the question of whether or not there is a continuing
2 right under 365(h) to possess property even after a sale,
3 dependent on whether the sale took place while the lease was
4 neither assumed or rejected or after. They say the test is was
5 the sale free and clear and did the bankruptcy court make the
6 requisite findings to do so. And if so, it was free and clear.
7 It was free and clear.

8 And, Your Honor, the irony of the argument is,
9 assume for the moment that the lease had been assumed prior to
10 the sale. In that circumstance, there would be no defense to a
11 sale -- free and clear sale order under 365(h). If you ordered
12 it free and clear, it would be free and clear of the assumed
13 lease. It might give rise against the estate, right, but it's
14 not an encumbrance that it can't be solved from.

15 The argument here says, well, because this lease
16 was ultimately rejected, we have better rights than someone
17 under an assumed lease would have. That's why the Fifth
18 Circuit said it's not a timing question, it's a finding
19 question, a finding question under 363.

20 And then finally, Your Honor, I'm going to just
21 address briefly Mr. Cecere's argument, which I believe he made
22 last time a little bit, and I responded to it through that
23 motion (indiscernible).

24 He says that the JP Court effectively -- he says
25 this in his pleadings as well -- ruled against (indiscernible)



1 assignee for (indiscernible) given timely notice, appropriate
2 notice under (indiscernible). I dare him to find that. You
3 signed the order. The order says no jurisdiction.

4 Did you find that case?

5 And, Your Honor, there's a state appeals court case
6 that I forgot the name of, which makes it really clear that the
7 failure to comply with notice is not jurisdictional. You may
8 lose for not having given proper notice in an eviction
9 proceeding, but it's not for want of jurisdiction.
10 Jurisdiction says I can't decide this issue. The JP Court said
11 I cannot decide this issue. That order is on appeal, right?

12 We don't go back to the JP Court. We're at --
13 we're at step one, looking at who has port -- who has the power
14 to compel Jetall to leave. There may be another state court.
15 Who knows? I'm not a Texas state court lawyer, but I am a
16 bankruptcy lawyer, Your Honor, and the cases are legion for
17 bankruptcy judges in enforcing their own orders to compel
18 parties to vacate the premises.

19 Your Honor, the case that I was referring to was
20 Alanis, A-L-A-N-I-S, v. Wells Fargo Bank National Association,
21 decided by the Court of Appeals not too far from here
22 (indiscernible) geography, right, the Fourth District, City of
23 San Antonio, Case Number 04-19-00461-cv. And it has an
24 extensive discussion of what does it mean for a matter to be --
25 to have been dismissed for lack of jurisdiction as opposed to



1 for it having been dismissed for failure to give proper notice.

2 And with that, I commend that to the Court's review.

3 Your Honor, I go back to the beginning just very
4 quickly. There's no interest in the property here that needs
5 to be (indiscernible) the automatic stay. You are able to make
6 that decision. You will not be stepping on Judge Robinson's or
7 Judge Brandon's toes if you do so. The -- this is an issue of
8 you enforcing an existing order to vacate. It is not an issue
9 to establish a claim or a right of payment. This is a very
10 different issue than a common stay.

11 And if I -- if it says commercial or non-
12 commercial, 541 of the Bankruptcy Code makes clear that a lease
13 which has been terminated, commercial or not commercial, prior
14 to the filing of the bankruptcy, in accordance with its terms
15 and any applicable law, does not become property of the estate.

16 That's what happened here. There was no lease that
17 went to the -- to the buyer that can be enforced against the
18 buyer. I make this statement about whether there are claims,
19 and the lease was openly rejected, right? They get an
20 unsecured claim in this case if they have one that they can
21 prove up, although I don't think they ever filed a proof of
22 claim, but they're going to do so. But that's a trustee issue
23 and not my issue.

24 And there's no reason to permit further delay in
25 allowing NBK's asking you to get control of this property that



1 it bought for their benefit. Thank you, Your Honor.

2 THE COURT: Mr. Cecere, I'm going to kind of
3 deviate from what I typically do and allow the movant to close
4 and allow you just a few brief moments to respond to anything
5 that Mr. Troop has said.

6 MR. CECERE: I appreciate that, Your Honor. I
7 would like to start first with the notion that personal
8 jurisdiction exists because you have nationwide jurisdiction.
9 I'm going to take us a little bit back to World-Wide
10 Volkswagen, but the concept of personal jurisdiction has two
11 things involved in it.

12 One is has the Court exerted its power over a
13 person to bring them within their jurisdiction? The second is
14 does that action comport with substantial -- fair play and
15 substantial justice. Are minimum contacts with the forum that
16 allow that person to have notice that would they be
17 ill-informed.

18 That's two different requirements. There's the --
19 there's the minimum contacts requirement. There is -- and that
20 is really applicable in state court. We're not suggesting that
21 that aspect of this case is decided here. We're in Texas and
22 we're in the United States, but what's missing here, and I
23 think -- fundamentally I think where we are at loggerheads with
24 the movants in this case is the idea that there is no summons
25 or no need. You get summonsed and (indiscernible) detainer



1 action. We received summons (indiscernible) action, because
2 that is the only way that a court can acquire jurisdiction over
3 the person before it. I mean, and if the person is a corporate
4 person, that's the same sort of thing. So we don't have
5 that -- we're not -- we're not arguing that. I don't want to
6 confuse the Court at all and suggest that's what -- I'm going
7 to make that kind of argument, but I want to clarify that

8 MR. TROOP: Troop, not Trump.

9 MR. CECERE: -- because I think that Mr. Troop's
10 coming in the wrong place on that. Now, and (indiscernible)
11 required summons. In fact, we cited a case in our brief, I
12 believe it is Conrad from the Fifth Circuit saying you need to
13 have valid service and service of summons before you can do a
14 forcible entry and detainer action at all.

15 I also know that they don't deal with
16 Granfinanciera. That is the limitations by appearing in the
17 case to assert a claim against a (indiscernible). That is just
18 not an assertion that the Court can do whatever it wants to
19 that person. Again, the Court has dealt with personal
20 jurisdiction. It's got to exert a power over the person in
21 order for -- and it's got to be proper, and it's got to be
22 through proper channels in order for the Court to have
23 jurisdiction over the person. That is a fundamental aspect of
24 federal procedure. It's also a fundamental aspect of due
25 process and state procedure, too. And we're just running



1 roughshod over that in this case, and they don't really have an
2 answer for that problem.

3 I -- I'm not -- I'm (indiscernible) to hear from
4 Mr. Troop that we're selectively reading the sale order, that
5 the provisions requiring that the -- that the property go free
6 of liens and that we not interfere with their possession of the
7 property, that those are -- constitutes a transfer of
8 possession, but it simply does not do so.

9 An order transferring possession, you'd say this
10 property is transferred to this person. That's what the
11 sale -- that's what the sale order does with the property
12 itself. It says the property is transferred from the debtor to
13 the bank, and then the bank designee or assignee. That is a
14 transfer of possession. What we have here, at the very least,
15 would be some kind of implication of the defenses that we could
16 raise in an action -- in an action to acquire transfer of the
17 property.

18 But that's exactly why they had to go into the
19 forcible entry detainer, why they had to go to the justice of
20 the peace in the first place, is that the sale order didn't
21 do -- didn't effectuate a transfer of possession. They always
22 contemplated the need for an eviction action in state court.

23 And I also -- I really appreciate the opportunity
24 to respond to my friend's challenge that there would be no
25 allegation of notice. I would like to -- I would like to point



1 the Court to our answer in the Justice in the Peace Court.
2 This is Docket Number 846-7 of that -- theirs, and ours is
3 847-2. The first paragraph of that -- of that order, of that
4 answer says we were not given notice. And then it goes on to
5 challenge title, but that does not -- that doesn't make the
6 notice go away.

7 Now, the order itself does not specify whether it's
8 about notice or about title or something else. But the Court
9 indicated in -- during the hearing, we have the affidavit of
10 Mark Hill, which (indiscernible) not contradicted. It says
11 that the Court was specifically concerned with notice.

12 Now, they say that that would make it improper
13 grounds to dismiss for jurisdiction. If they had a problem
14 with the way that the Court wrote its order, then they should
15 have solved that problem with the Justice Court or should have
16 filed an appeal. They didn't do that -- either of those two
17 things.

18 And finally I want to address something that they
19 say. You know, he said that they cited a number of cases in
20 their brief to suggest that you can use a sale order and use
21 that as a justification for an eviction. We have distinguished
22 in our response, and I urge you to read the cases that we've
23 cited in detail and discussed. Those cases are very fact-
24 dependent, and they depend upon a very particular fact. An
25 order -- a prior order that actually transfers possession.



1 They arise in two different circumstances. One is
2 in which there is an agreed order between the debtor and some
3 other party that if certain conditions are not met, the
4 property will be transferred. Of course the Court has -- of
5 course the Court has jurisdiction to enforce that order by
6 doing -- enforcing the promise in the order. If the conditions
7 fail, then the promised transfer of possession can occur. That
8 is not this case. We never promised anything.

9 The second set of circumstances involve situations
10 in which it is the debtor being evicted, and they -- and the
11 bankruptcy court uses the sale order as justification for the
12 eviction. I have no quarrel with those cases, but those cases
13 do not pertain here. The reason that those cases work is that
14 there is a transfer of possession in every sale order between
15 the debtor and whoever gets the property out of bankruptcy.
16 That's what the sale order does. That's what the sale order
17 does in this case.

18 But the mere existence of a sale order that
19 transfers property between the debtor and somebody else is not
20 a transfer of property between a leaseholder and somebody else.
21 And the lease -- and the sale order in this case does not do
22 that. And we think for all of those reasons, in addition to
23 the fact that evicting Jetall would be a very blatant and
24 willful violation of the automatic stay, we think the Court
25 should reject this order -- this motion entirely.



1 THE COURT: All right. Thank you.

2 Mr. Troop, I don't need a response. So here's what
3 I'm going to do. So just so you know, Christopher Bradley was
4 assigned Case Number 24-11544, which was the involuntary filed
5 against Jetall Companies in the Western District of Texas less
6 than 12 hours prior to this hearing.

7 I have reached out to Chris. I've asked him if he
8 has any objection to me transferring the case to me. Assuming
9 that he has no objections, I'm going to transfer the case to
10 myself by order. All right? If he does object, he can keep
11 the case. All right?

12 I'm going to take 838 under advisement. I'll make
13 the following findings on the record. I think that my prior
14 orders terminated the lease between Jetall and the debtor. I
15 don't think that there is a lease at this point in time, okay?
16 That's based purely on memory, and obviously there has been a
17 lot that has transpired in this case, so I could be totally
18 wrong in that regard, but that is my recollection. And I think
19 if that is true, it will play a large part in what I do going
20 forward, taking 838 under advisement.

21 I have always been troubled by the fact that
22 justice of the peace courts, at least in Texas, have exclusive
23 jurisdiction for evictions. But I will tell you that I have
24 personally seen Judge Isgur compel eviction when he's enforcing
25 a sale order, and so I don't think that I lack the ability to



1 do that. I don't think that a summons is required. I think
2 that I've seen Judge Isgur do it without a summons, basically
3 enforcing a sale order before.

4 I'm not sure the reasoning behind that. I'm not
5 sure if he wrote on that issue, but I am currently of the
6 impression that I have the ability both jurisdictionally and,
7 you know, just by the sheer force of me being able to enforce
8 my own orders. But I'll take 838 under advisement. I'll read
9 the Well case from the Court of Appeals. I'll look at
10 everything one more time. You can expect a ruling and
11 hopefully a decision about whether I will take the Jetall
12 involuntary case probably by early this afternoon when I fly
13 back to Houston. All right? Thank you all for appearing.

14 MR. CECERE: Your Honor, I'd like to just lodge for
15 the record of my -- our objection to your transfer.

16 THE COURT: And that's fine, and that will -- that
17 will solely feel or be within Judge Bradley's discretion.
18 While I think I have the power to transfer the case to me
19 without asking him, I would not do that. And if he says it's
20 okay, it'll be okay. If it's not, it won't happen.

21 All right? Thank you.

22 MR. TROOP: Thank you, Your Honor, for your time.


23 THE COURT: All right. Thank you. We're adjourned
24 until 10:30.

25 (Proceedings concluded at 5:38 p.m.)



C E R T I F I C A T I O N

I, Ilene Watson, court-approved transcriber, hereby
certify that the foregoing is a correct transcript from the
official electronic sound recording of the proceedings in the
above-entitled matter.



ILENE WATSON, AAERT NO. 447

DATE: December 7, 2024

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